

for Respondents.

LPA No 743/97

AMARSINHBHAI KARAMSINHBHAI ISAMALIA

Versus

ELECTION OFFICE & DY COLLECTOR

Appearance:

MR JAYANT PATEL for Petitioners

MR H.M.Mehta , Mr. N.D. Nanavati & BM MANGUKIYA,
for respondents

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 18/07/97

ORAL JUDGEMENT(Per:Thakker.J)

These Letters Patent Appeals arise out of two orders passed by the learned single Judge in Special Civil Application Nos. 4091/97 and 4092/97 decided on July 14,1997.

2. The appellants - original petitioners in the above Special Civil Applications have approached this Court for appropriate writ, direction or order quashing and setting aside a decision taken by the Election Officer and Dy. Collector, Amreli District Central Co.operative Bank Ltd-respondent no.1 herein of rejecting nomination forms of the petitioners from Dhari constituency. According to the said appellants the said action is as illegal, ultra vires and unlawful.

3. It is the case of the appellants that a notification for election of Directors of Amreli District Central Co.operative Bank was published by respondent no.1 on 14.5.97. As per the said programme, nomination forms were to be filled in on or before 26.5.97 and scrutiny thereof was to take place on May 28,1997. It appears that because of mob violence, the nomination forms could not be filled in time. The said programme was therefore,changed and rescheduled on May 30,1997. As per the changed programme, nomination forms were to be submitted on or before July 2,1997 and scrutiny was to take place on July 3, 1997. It was stated in the notification that only those candidates would submit their nomination forms who had submitted such nomination forms earlier in pursuance of earlier election Notification published on May 14,1997. A condition was also imposed that these nomination forms must be by the

same proposer as well as by the same seconder. It is an undisputed fact that so far as present appellants are concerned, though the proposer was the same, the seconder was changed. In these circumstances the nomination forms submitted by the appellants came to be rejected. It appears that when scrutiny took place and final list was prepared, the nomination form of one Manubhai Kotadia respondent no.4 herein representing Kubhda Seva Sahakari Mandli Ltd. was found to be in order and since he was the only candidate whose nomination form was in accordance with Rule 31 of Gujarat Specified Co.op.Societies Elections to Committees Rules 1982,(hereinafter referred to as "the Rules"), he was declared as uncontested. In fact, by that time the election had not taken place, which took place on June 16,1997. But in view of the fact that respondent no.4 was the only candidate whose nomination form was found to be in order and was required to be declared as successful candidate, he was declared elected.

4. The appellants immediately approached this Court by invoking the jurisdiction of this court under Article 226 of the Constitution of India-against the said action. The learned Single Judge, issued notice and granted ad-interim relief. After hearing the parties the learned single Judge, dismissed the petition and vacated ad-interim relief. Against that order present appellants have filed these appeals.

5. Mr. Patel learned counsel for the appellant contended that the learned single Judge has committed an error of law apparent on the face of the record in not entertaining petitions on the ground that alternative remedy was available to them. He conceded that alternative remedy is available to the petitioners but in facts and circumstances of the case, the learned single Judge ought to have exercised powers under Article 226 of the Constitution. He submitted that it is not that High Court has no jurisdiction to hear the matters or that in no case it will exercise such powers. On the contrary there are cases in which this court should exercise the extra ordinary powers and grant relief with a view to decide the matter expeditiously so that persons who are not otherwise eligible and/or qualified do not hold public office. Mr. Patel has, in this connection,placed reliance on the following decisions in support of his case.

2. 1993(1) Gujarat Current Decisions 433

(Lajuben Jerambhai Bhil & ors vs.
Ahmedabad Municipal Corporation &
ors.)

3. AIR 1996 SC 1507(Surendra Kaur vs State
of Punjab & ors.)

4. 1996(2) GLR 288(Vishnubhai K.Thaker vs.
Upadhyay District Registrar).

5. According to Mr. Patel respondent no.1 has no power, authority or jurisdiction to impose a condition that nomination form must be submitted with the same proposer and seconder. For that purpose he relied on Rules 16(c). 19, 23 and 82 of the said Rules and urged that the scheme of the Rules is that such nomination form must be in order that is to say, it must be by a proposer as well as by a seconder. If an illegal condition is imposed on a candidate that he must file a nomination form by a particular proposer or seconder, the authority has acted de hors the Act and Rules and learned single Judge ought to have interfered with.

6. Finally, it was contended that the appellants have approached this court expeditiously. As soon as nomination forms of the appellants were rejected, they filed petitions and obtained ad-interim relief. When the court entertained petitions, in the light of the facts and circumstances, the petitions ought to have been decided on merits.

7. Mr. H.M.Mehta, Mr. N.D.Nanavati and Mr. B.M.Mangukia, on the other hand supported the order passed by the learned Single Judge. They submitted that considering the scheme of the Act and the Rules, it is abundantly clear that the underlying object thereof is that a person aggrieved should approach a Tribunal constituted under Gujarat Co.Op.Societies Act (hereinafter referred to as the 'Act') and should not invoke Article 226 of the Constitution. In this connection, they placed reliance upon Chapter XIA of the Act and particularly on section 145U thereof. Relevant part of section 145U reads thus:

"145U. Disputes relating to elections to be
submitted to the Tribunal

(1) Notwithstanding anything contained in section
96 or any other provisions of this Act, any

dispute, relating to an election shall be referred to the Tribunal"

It was also submitted that this is the consistent view taken by all High Courts and the Supreme Court. Our attention was invited to a decision of the Supreme Court in Gujarat University vs. N.V Rajguru AIR 1988 SC 66 and of this Court in Mehsana District Co-operative Sales and Purchase Union Ltd. & anor. vs. State of Gujarat & ors.29 (2) GLR 1060. In Rajguru (Supra) this court exercised the extra ordinary powers under Article 226 of the Constitution but that order was interfered with by the Supreme Court. It was also submitted that in that case, there was no remedy by an election petition before a Tribunal constituted under the Act but the disputes were to be referred to the State Government and yet, the Apex Court held that the High Court ought not to have exercised the powers under Article 226 of the Constitution . Mehsana District Co-operative Sales and Purchases Union(Supra) is pending in Letters Patent . It was finally submitted when that the learned single Judge has not interfered with the action and directed the appellants to approach alternative forum of statutory nature available to them, the order cannot be said to be contrary to law or arbitrary and does not requires interference by appellate court.

8. We see considerable force in the argument of the learned counsel for the respondents. Looking to the scheme of the Act, it clearly appears to us that the legislative intent is not to encourage approaching this court by invoking extra ordinary jurisdiction under Article 226 of the Constitution of India. It is no doubt true that the powers conferred on this Court under article 226 of the Constitution cannot be taken away by a statute. But while interpreting statutory provisions, this court must be mindful of the Legislative intent. Section 145U of the Act enacts that any person aggrieved should approach a Tribunal by filing election petition before a Tribunal. That aspect must be borne in mind while exercising powers under Article 226 of the Constitution. In our opinion the learned single Judge has taken into account that point and has rightly not exercised powers under Article 226 of the Constitution. It cannot be said that by doing so, the learned Single Judge has committed any illegality and/or that such order suffers from any infirmity. We therefore, do not see any reason to interfere with the order passed by the learned single Judge and dismiss both the appeals.

9. We may however, state that we are not expressing

any opinion on merits. We also clarify that whatever observations made by us hereinabove have been made only for the purpose of deciding these two appeals. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)